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In this case the accused was indicted at the May term, 1920, of the trial court for the murder of one L. A. Mann.

Don P. Halsey, of Lynchburg, for plaintiff in error.

John R. Saunders, Atty. Gen., for the Commonwealth.

SOUTHERN RY. CO. et al. *v.* WHITE.

SAME *v.* BOWDEN.

Nov. 18, 1920.

[104 S. E. 865.]

1. Waters and Water Courses (§ 17 (2)*)—Railroad Company under Duty to Exercise Care Not to Obstruct Natural Flow of River with Culvert.—It was the duty of a railroad when it substituted a culvert for a trestle which carried its tracks over a stream to exercise due care not to obstruct the natural flow of the river; that is, it was its duty to secure against ordinary periodic freshets 'which could be foreseen with reasonable certainty.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 675.]

2. Waters and Water Courses (§ 179 (4)*)—Evidence Held to Sustain Contentions of Landowners Suing for Flooding of Farms by Railroad's Culvert.—In an action by landowners against a railroad for damages from flooding caused by backing up of the waters of a culvert, evidence held to sustain contentions of plaintiffs: First, with respect to the extent of the backwater on their respective farms, and the damage done; second, that such backwater was due to the inadequacy of the culvert, and did not take place under prior conditions.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 681.]

3. Waters and Water Courses (§ 179 (4)*)—Evidence Held to Show that Rainfall Which Caused Water to Back up from Railroad's Culvert Not Unprecedented.—In an action by landowners against a railroad for damages from flooding of their farms when a culvert backed up the waters of a stream, evidence held to show that the rainfall at the time of the overflows was not an unprecedented down-pour, but one that might have reasonably been expected from the experience of the locality.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 682.]

4. Waters and Water Courses (§ 176*)—Culvert Likely to Cause Overflows Created Immediate Cause of Action in Landowner's Favor.—The moment it was established by landowners that culvert to carry a railroad's tracks across a river was in itself a perpetual menace to the landowners' property by its likelihood to cause floods in times of extreme rainfall, it effected a permanent diminution in value of such properties, and created an immediate cause of action in favor

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the landowners, the injury not depending on the use of the property, and the landowners were not under obligation to bring successive actions for each successively accruing overflow and damage, but could recover entire future damages to land and crops, as well as past damages, in a single action.

5. Evidence (§ 497*)—Opinion Testimony as to Diminution in Value of Lands through Overflows Proper.—In an action against a railroad for accrued and future damages to plaintiffs' lands from overflows caused and to be caused by a culvert carrying the railroad's track across a river, though the extent of the injurious effect of the culvert on the value of plaintiffs' lands was a matter of opinion, opinion testimony on such matter was properly allowed to go to the jury, in view of the necessities of the case.

[Ed. Note.—For other cases, see '13 Va.-W. Va. Enc. Dig. 680.]

Error to Circuit Court, Albemarle County.

Actions, heard and determined together, by C. B. White and Ella N. Bowden against the Southern Railway Company and Walker D. Hines, Federal Director General of Railroads. To review judgments for plaintiffs, defendants bring error. Affirmed.

W. Allan Perkins and *Geo. E. Walker*, both of Charlottesville, for plaintiffs in error.

G. M. McNutt, of Charlottesville, for defendants in error.

TOWN OF NARROWS *v.* BOARD OF SUP'RS OF GILES
COUNTY et al.

Nov. 18, 1920.

[105 S. E. 82.]

1. Municipal Corporations (§ 962*)—Town by Charter Empowered to Tax for Improvement of Streets in Addition to Receiving District Road Taxes.—Under Acts 1914, c. 327 (Narrows Town Charter) § 26, the towns may tax its inhabitants for improvement of its streets in addition to the three-fourths of district road taxes which it is entitled to receive under sections 27, but cannot levy an additional road tax for any other purpose.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 227.]

2. Highways (§ 126*)—Inhabitants of Towns Subject to All County and District Road Taxes.—The inhabitants of an incorporated town are subject to all the county or district road taxes to which the inhabitants outside of the town are subject.

3. Highways (§ 90*)—Legislature Can Create Separate Road Districts of Magisterial Districts of County.—The legislature has power

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.